

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

DEFENDANTS' SUBMISSION REGARDING EXPERT-RELATED DEADLINES

On August 6, 2020, the Court found good cause to grant Defendants' Expedited Motion to Modify Expert Discovery Deadlines. ECF No. 834. At Defendants' request, the Court extended the deadline for submission of defendants' expert reports by two weeks (to August 27, 2020) and for completion of expert witness depositions by one week (to September 22, 2020). *Id.* The Court directed the parties to confer about any necessary changes to other dates in the scheduling order "because of this extension." *Id.* The parties conferred, but were unable to reach agreement on what changes to the existing schedule should flow from the Court's modest extension of those two expert-related dates.

As the Court is no doubt aware, the pretrial schedule in this case is extremely compressed, requiring the simultaneous submission of dispositive motions, *Daubert* motions, and motions in limine within a period of two weeks, with briefing on those motions concluding just two weeks before the trial date. There is very little room to adjust pretrial deadlines “without moving the October 19, 2020 trial date,” as the Court directed. *Id.* (emphasis in original). Accordingly, in light of the small adjustments to the expert-related dates the Court found to be warranted, Defendants respectfully propose that the *Daubert* deadlines be adjusted modestly as well:

	Current Deadline	Proposed Deadline
<i>Daubert</i> motions filed	September 22, 2020	September 29, 2020
<i>Daubert</i> oppositions filed	September 29, 2020	October 6, 2020
<i>Daubert</i> replies filed	October 5, 2020	October 12, 2020

By keeping the existing deadlines for summary judgment and motions in limine the same, the slight modification of the *Daubert* deadlines proposed above also has the salutary effect of very slightly easing the burden on both parties to prepare so many significant briefs in such a short period of time.

Defendants understand that Plaintiffs may propose that certain briefing dates be *advanced* from their current settings. As Defendants have informed the Court in their periodic status updates, certain fact discovery is continuing throughout the month of August, based largely on understandable delays in third party document and deposition discovery due to COVID-19. *See* ECF Nos. 854, 810, 733. Plaintiffs’ disclosure of 20 expert witnesses offering more than 2,000 pages of opinions—many of them not previously offered in other opioid litigation—ensures that

the time up to September 22, 2020 will be fully consumed by expert depositions. Accordingly, Defendants respectfully submit that no briefing deadlines could or should be advanced as a result of the Court's slight modification of the expert-related deadlines.

Dated: August 11, 2020

Respectfully submitted,

Cardinal Health, Inc.

By Counsel:

/s/ Steven R. Ruby

Michael W. Carey (WVSB #635)
Steven R. Ruby (WVSB #10752)
David R. Pogue (WVSB #10806)
Raymond S. Franks II (WVSB #6523)
CAREY DOUGLAS KESSLER & RUBY PLLC
707 Virginia St., E., Ste. 901
Charleston, West Virginia 25301
Telephone: (304) 345-1234
Facsimile: (304) 342-1105

/s/ Enu Mainigi

Enu Mainigi
F. Lane Heard III
Jennifer G. Wicht
Ashley W. Hardin
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com
lheard @wc.com
ahardin@wc.com

McKesson Corporation

By Counsel:

/s/ Jeffrey M. Wakefield

Jeffrey M. Wakefield (WVSB #3894)
Jason L. Holliday (WVSB #12749)
FLAHERTY SENSABAUGH BONASSO PLLC

P.O. Box. 3843
Charleston, WV 25338-3843
Tel: (304) 345-0200
jwakefield@flahertylegal.com
jholliday@flahertylegal.com

/s/ Carol Dan Browning
Carol Dan Browning
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
Tel: (502) 587-3400
cbrowning@stites.com

/s/ Timothy C. Hester
Timothy C. Hester
Mark H. Lynch
Christian J. Pistilli
Laura Flahive Wu
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Tel: (202) 662-5324
thester@cov.com
mlynch@cov.com
cpistilli@cov.com
lflahivewu@cov.com

AmerisourceBergen Drug Corporation
By Counsel:

/s/ Gretchen M. Callas
Gretchen M. Callas (WVSB #7136)
JACKSON KELLY PLLC
Post Office Box 553
Charleston, West Virginia 25322
Tel: (304) 340-1000
Fax: (304) 340-1050
gcallas@jacksonkelly.com

/s/ Robert A. Nicholas
Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square

1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 11th day of August, 2020, the foregoing **“Defendants’ Submission Regarding Expert-Related Deadlines”** was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Steven R. Ruby
Steven R. Ruby (WVSB #10752)